



ARKANSAS JUDICIARY

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## **Rule 4-8. Procedure For No-Merit Briefs, Pro Se Points, And Responses In Involuntary-Commitment Cases.**

(a) After studying the record and researching the law, if appellant's counsel in an involuntary-commitment case determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit brief and move to withdraw. Counsel's no-merit brief must include the following information:

(1) The argument section of the brief shall list all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.

(2) The abstract and addendum shall contain all rulings adverse to the appellant made by the circuit court at the hearing from which the order of appeal arose.

(b) Appellee is not required to, but may, respond to a no-merit brief. Appellee may file a concurrence letter supporting the no-merit brief. Any appellee's response shall be filed within thirty (30) days of the filing of the no-merit brief.

(c) The Clerk of the Supreme Court shall mail the appellant, at the appellant's last known address, a copy of the no-merit brief and the motion to withdraw. The Clerk shall notify the appellant in writing that the appellant may raise any points that the appellant chooses and that these points may be typewritten or hand-printed. The Clerk shall also notify the appellant that the points must be received by the Supreme Court Clerk by mail or other method of delivery within thirty (30) days from the date that the Clerk mailed the appellant the notification.

(d) The Clerk shall mail a copy of appellant's points to the appellee and appellant's counsel within three (3) business days after receiving them.

(e) Appellee is not required to respond to appellant's points. Appellee may do so, however, by filing a response within thirty (30) days of the date the points were received by the Clerk of the Supreme Court.

**Explanatory Note.** In appeals in criminal, termination-of-parental-rights, and adult long-term protective-custody cases, appointed counsel may discharge their professional obligations by filing a no-merit brief and moving to withdraw. The Clerk must serve the brief and motion on the appellant, who then has the opportunity to file pro se points, which the appellee may in turn respond to. Ark. Sup. Ct. R. 4-3(j) and 6-9(i); see generally *Anders v. California*, 386 U.S. 738 (1967); *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004); *Adams v. Ark. Dep't of Health & Human Servs.*, 375 Ark. 402, \_\_\_\_ S.W.3d \_\_\_\_

(2009). This procedure balances the appellant's right to counsel on appeal and due process with the lawyer's obligation as an officer of the court not to pursue frivolous arguments. Involuntary-commitment cases raise similar constitutional and procedural concerns. But no Anders procedure currently exists in our rules for those kinds of cases. While the deprivation of liberty is neither as extended as a prison sentence nor as final as losing parental rights, involuntary commitment is nonetheless a "massive curtailment of liberty," and thus constitutionally significant. *Humphrey v. Cady*, 405 U.S. 504, 509 (1972). The supreme court recently noted this issue, *Dickinson v. State*, 372 Ark. 62, 67, 270 S.W.3d 863 (2008), but did not decide whether an Anders procedure is needed in involuntary-commitment cases. *Dickinson*, 372 Ark. at 70-71, 270 S.W.3d at 866-67 (Imber and Brown, JJ., dissenting). The new rule creates this procedure for these cases.

**Associated Court Rules:**

Rules of the Supreme Court and Court of Appeals of the State of Arkansas

**Group Title:**

Article IV. Briefs

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